

**United States Bankruptcy Court
Eastern District Of Washington**

In Re:

JOHN D. BROERS

Debtor(s).

Main Case Number: 07-00094

AMENDED DECISION

John D. Broers is a chapter 13 debtor and, for the purposes of the means test, an above median income debtor in a single person household. In calculating his chapter 13 plan payment, Mr. Broers deducted transportation allowances for each of his two vehicles. The chapter 13 trustee (trustee) objects to the confirmation of Mr. Broers' plan, contending the transportation allowance for the second vehicle is neither reasonably necessary nor permissible under the 11 U.S.C. § 707 (b)(2) means test formula. The court concludes above median income debtors like Mr. Broers must calculate expenses in accordance with § 707 (b)(2). As a consequence, courts generally lack authority under § 1325 (b)(2) to decide whether a standardized expense established by Congress is reasonably necessary. The court further concludes, however, the means test, official form B22C, and the IRS standards all require interpretation and application, a function performed by the courts in the confirmation process. As applied to the facts of this case, the means test formula does not mandate a transportation allowance for Mr. Broers' second vehicle. Accordingly the court rules that the transportation allowance for the second vehicle is not reasonably necessary.

STATEMENT OF FACTS

John Broers is a crane operator, who lives in East Wenatchee and works at ALCOA. His gross monthly income is \$5,200.00. He lives alone but pays child support for a nine year old daughter, who lives with her mother in Vancouver, Washington. Twice a month Mr. Broers travels to Vancouver to spend time with his daughter. Mr. Broers owns two vehicles, a 2006 KIA Rio,

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1 which he uses for travel to Vancouver, and a 1997 Ford F150 pickup, which he uses for
2 transportation to ALCOA and general yard work.

3 In January of this year, Mr. Broers filed a petition for relief under chapter 13 of the
4 bankruptcy code. His chapter 13 plan provides for a term of 60 months and a base amount of
5 \$38,320.00, funded by monthly payments of \$600.00 for two months and \$640.00 for the remaining
6 58 months. Among its provisions, Mr. Broers' plan includes a regular monthly payment and an
7 arrearage payment on his 2006 KIA Rio automobile. The plan also provides for the distribution of
8 approximately \$12,872.55 to general unsecured creditors.

9 Along with his chapter 13 petition, Mr. Broers filed official form B22C, denominated A
10 Statement of Current Monthly Income and Calculation of Commitment Period And Disposable
11 Income. On that form, Mr. Broers claims transportation allowances (operating and ownership) for
12 the 2006 KIA Rio and the 1997 Ford F150 pickup. He owns the Ford pickup outright and he does
13 not make any loan or lease payment on it. On that form, Mr. Broers states his annualized current
14 monthly income is \$59,586.56, which exceeds the applicable median family income for a one person
15 household by \$15,000.00.

16 The trustee objects to confirmation of Mr. Broers' proposed chapter 13 plan. The trustee
17 contends Mr. Broers is not proposing to pay all disposable income into his plan because he is
18 claiming an excessive allowance for transportation. Specifically, the trustee argues Mr. Broers
19 cannot claim a transportation allowance for his second vehicle for three reasons. First, Mr. Broers
20 has not shown that his second vehicle is a reasonably necessary expense. Second, the transportation
21 allowance for a one person household should be limited to one vehicle. Third, even if Mr. Broers
22 could claim a deduction for a second vehicle, he cannot claim an ownership expense for a vehicle on
23 which he is not making a loan or lease payment.

24 DISCUSSION

25 11 U.S.C. § 1325 (a)(3) obligates the court to confirm Mr. Broers' chapter 13 plan if, among
26 other things, the plan is proposed in good faith and not by any means forbidden by law. The statute
27 further provides that if either the trustee or an unsecured creditor objects to the confirmation of the
28 plan, the court may not approve the plan unless "the plan provides that all of the debtor's projected

1 disposable income to be received in the applicable commitment period... will be applied to make
2 payments to unsecured creditors under the plan.” § 1325 (b)(1)(B).

3 Section 1325 (b)(2) defines disposable income as “current monthly income received by the
4 debtor... less amounts reasonably necessary to be expended[.]” The statute further provides that the
5 “amounts reasonably necessary to be expended under paragraph (2) shall be determined in
6 accordance with subparagraphs (A) and (B) of § 707 (b)(2),” if the debtor has annualized current
7 monthly income greater than the median family income of the debtor’s state. § 1325 (b)(3).
8 Additionally, §707 (b)(2) provides the “debtor’s monthly expenses shall be the debtor’s applicable
9 monthly expense amounts specified under the National Standards and Local Standards, and the
10 debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by
11 the Internal Revenue Service for the area in which the debtor resides...” § 707 (b)(2)(A)(ii)(I). In
12 summary, for above median income debtors like Mr. Broers, “disposable income” is now based on
13 “current monthly income” minus “applicable monthly expense amounts” and “actual monthly
14 expenses.” § 1325 (b)(2). And National Standards, Local Standards, and Categories of Other
15 Necessary Expenses as set by the IRS determined amounts reasonably necessary to be expended.

16 Like other chapter 13 debtors, Mr. Broers was required to complete official form B22C in
17 order to show that he was paying all of his projected disposable income into his plan. At part I of
18 the form, he reported his income earned or received during the six months before the month the case
19 was filed so that his “current monthly income” could be calculated. At part II, his current monthly
20 income was multiplied by 12 to reach an annualized figure, which was compared to the median
21 family income for the state of Washington for a one person household. Because Mr. Broers’ income
22 exceeds the comparable median income, he is required to commit to a five year chapter 13 plan.
23 There is no dispute between the trustee and the debtor regarding parts I and II of form B22C.

24 The dispute between the trustee and the debtor involves part III of form B22C, which is used
25 to determine the statutory methodology by which Mr. Broers’ current monthly income will be
26 adjusted for monthly expenses to calculate disposable income. Because Mr. Broers is an above
27 median income debtor, the reasonably necessary expenses involved in the disposable income
28 calculation will be determined according to the methodology set forth in § 707 (b)(2)(A) and (B). §

1 1325 (b)(3). The available deductions are generally comprised of certain national and local standard
2 deductions based on IRS guidelines, certain actual expenses allowed by IRS guidelines, other actual
3 expenses allowed by § 707 (b)(2) and other deductions for secured debt, priority debt, and
4 administrative expenses.

5 In part III, the deductions for expenses associated with the operation and ownership of
6 vehicles appear in three different places. First, at line 27, a deduction is available for operating
7 expenses, based on IRS local standards. There, Mr. Broers used the local standard deduction of
8 \$420.00 for a debtor operating “two or more” vehicles. The trustee objects to this deduction because
9 the trustee asserts a second vehicle deduction for a one person household is neither allowable nor
10 reasonably necessary.

11 At lines 28 and 29, there are deductions for ownership expenses. At line 28, Mr. Broers
12 deducted \$162.00, which was calculated by subtracting his monthly car payment of \$309.00 from
13 \$471.00, the local standard ownership deduction for the first vehicle. The trustee does not object to
14 this deduction. At line 29, Mr. Broers deducted \$332.00, which is the local standard ownership
15 deduction for a second vehicle. The trustee objects to Mr. Broers’ ownership deduction for the
16 second vehicle because it is a second vehicle and because the vehicle has no ownership cost.

17 The court is confronted with several questions regarding Mr. Broers’ transportation expense
18 deductions on form B22C. First, can Mr. Broers deduct any expense for a second vehicle, if the first
19 vehicle is sufficient for his transportation needs? Second, under § 707 (b)(2) can a one person
20 household claim a transportation expense deduction for a second vehicle? Third, can Mr. Broers
21 deduct an ownership expense for a vehicle he owns free and clear and not subject to any ownership
22 expense?

23 Mr. Broers’ case for these deductions is based upon the apparent distinction § 707
24 (b)(2)(A)(ii)(I) makes between **applicable monthly expense amounts** and **actual monthly**
25 **expenses**. The section mandates that the debtor’s monthly expenses “shall be,” *inter alia*, the
26 “**applicable monthly expense amount** specified under the National Standards and Local Standards,
27 and the debtor’s **actual monthly expenses** for the categories specified as Other Necessary Expenses
28 issued by the Internal Revenue Service for the area in which the debtor resides...” (Emphasis

1 added). Id. Mr. Broers argues that he is entitled to these deductions because transportation expense
2 deductions are standardized and apply to the above median income debtor in Washington state,
3 without reference to actual expense. The actual expense limitation refers to Other Necessary
4 Expenses, which involves a different category of expenses.

5 The trustee disagrees with Mr. Broers. According to the trustee, this court should determine
6 whether the expense for the second vehicle is reasonably necessary and if not, the court should deny
7 any deduction for the second vehicle. The premise underlying this contention is that the court
8 retains the authority to rule whether any expense is reasonably necessary, even after the 2005
9 amendments to the Bankruptcy Code created objective and mechanistic standards for determining
10 those expenses. Also, the trustee notes the IRS publishes the Financial Analysis Handbook as a
11 guide to its' agents for the interpretation of the National Standards and Local Standards referenced in
12 § 707 (b)(2). The trustee asserts Congress must have intended the courts to follow the IRS'
13 interpretation of National Standards and Local Standards. According to the Financial Analysis
14 Handbook's interpretation of Local Standards, Mr. Broers should not be allowed an ownership cost
15 deduction for a vehicle not subject to any ownership cost or any transportation deduction for a
16 second vehicle.

17 Earlier this year my colleague Judge Williams ruled a debtor could reduce the debtor's
18 projected disposable income by deducting ownership cost for a vehicle when the debtor was not
19 actually making a loan or lease payment on the vehicle. In re Armstrong, 370 B.R. 323 (Bankr. E.D.
20 Washington, 2007). In that case, the trustee argued that Judge Williams should follow the guidance
21 of the IRS Financial Analysis Handbook. Judge Williams rejected the trustee's invitation to align
22 herself with the IRS Financial Analysis Handbook, reasoning that the handbook was not incorporated
23 into the statute by Congress and prepared by the IRS for collection and not bankruptcy purposes.
24 Traditionally the three judges of this district have not written conflicting opinions regarding the same
25 issue in order to avoid disparate treatment of debtors and creditors within the district. For that reason
26 the court will follow Armstrong. This means the court has answered some of the questions raised by
27 this case. First, the court will not be directed by the IRS interpretation of Local Standards as stated
28 in the Financial Analysis Handbook. Second, the court holds Mr. Broers is not required to incur an

1 ownership expense for his vehicle in order to take the local standard ownership deduction.

2 There is some additional guidance for the resolution of this case in eCast Settlement Corp. v.
3 Pak (In re Pak), BAP no. NC-07-1201-DCak (November 2007), a recent Bankruptcy Appellate Panel
4 case dealing with the income side of the disposable income equation. In Pak, the court analyzed §
5 1325 (b) to determine whether and how two terms used in the statute- “disposable income” and
6 “projected disposable income”- differ. To confirm a chapter 13 plan that has been challenged by the
7 chapter 13 trustee or a creditor, the court must find the debtor’s “projected disposable income” has
8 been committed to the plan. § 1325 (b)(1)(A). Before the 2005 amendments, courts traditionally
9 made this finding based upon current and forward looking financial information regarding the debtor.
10 By contrast, “disposable income” as defined in § 101 (10A) and further defined in § 1325 (b)(2) is
11 backward looking, based upon the debtor’s history for the six months preceding the filing of the case.
12 Disposable income is calculated for means test purposes and recorded at line 58 of form B22C.

13 In Pak, the debtor had been unemployed for much of the time before he filed his case. For
14 that reason he argued that his “projected disposable income” should be based upon the “disposable
15 income” figure appearing on his form B22C. Simply stated, projected disposable income is the
16 number at line 58 multiplied over the term of the plan. Creditors and the chapter 13 trustee objected,
17 maintaining that the court independently should look at the debtor’s current employment status,
18 calculate disposable income based upon current income and project that number over the term of Mr.
19 Pak’s plan. In other words, the court should continue to base its findings upon the debtor’s present
20 and future ability to fund the plan in the same manner as the court had performed that function before
21 the 2005 amendments.

22 Bankruptcy courts that have considered the legal issue before the Pak court generally have
23 sided with the trustee and creditor. In re Briscoe, __ B.R. __, 2007 WL 2483863 (Bankr. D. Dist. Col.)
24 and In re Meek, 370 B.R. 294, 299-305 (Bankr. Idaho, 2007). Confirming a chapter 13 case based
25 upon historical and not current financial information has little to recommend it. While a formulaic
26 approach to the confirmation process would be simple for courts to apply, it could be less fair.
27 Undoubtly debtors would engage in prebankruptcy planning to the detriment of creditors.
28 Conversely honest debtors might be denied the opportunity for a fresh start based upon the historical

1 data, even though the debtors could demonstrate a current ability to fund a plan.

2 While sound bankruptcy policy may have supported the position of the parties opposing
3 confirmation of Mr. Pak's plan, the issue before the appellate court was not policy but statutory
4 construction. Specifically, whether Congress changed the meaning of "projected disposable income"
5 in § 1325 (b) by injecting into the statute the term "disposable income." Ultimately the Pak court
6 decided the answer was unclear and Congress' use of the two terms created ambiguity. After
7 applying standard tools of statutory construction, the court sided with the weight of bankruptcy court
8 authority, ruling "that in interpreting 'projected disposable income' in § 1325(b)(1)(B), 'disposable
9 income,' as defined in § 1325 (b)(2) is the starting point for determining 'projected disposable
10 income' subject to adjustment, based on evidence, to reflect reality going forward." Pak, BAP No.
11 NC-07-1207-DCaK (November 2007).

12 From Pak we have learned that on the income side of the disposable income equation, the
13 court has retained some measure of discretion in the confirmation process. The means test number
14 appearing on form B22C is a starting point, from which the court may make adjustments based upon
15 current and actual income. The next question is whether the same flexibility exists on the expense
16 side of the disposable income equation.

17 Before the 2005 amendments became effective, bankruptcy courts routinely decided whether
18 chapter 13 debtors expenses were reasonably necessary. Whether bankruptcy courts retain this
19 authority for above median income debtors after the amendments to § 1325 (b)(2) and (3) is the next
20 question to be addressed by the court. The trustee argues that because § 1325 (b) continues to
21 require that expenses be "reasonably necessary," the court retains the authority to make a threshold
22 determination regarding whether any expense is reasonably necessary. In response, Mr. Broers
23 argues that the mandatory language of the statute ("amounts reasonably necessary to be extended
24 under paragraph (2) **shall be determined** in accordance with subparagraphs (A) and (B) of § 707
25 (b)(2)" emphasis added) evidences Congress' intent to deprive the court of that authority.

26 Preliminarily, it is important to note that Pak, although providing useful guidance to the
27 court, is not controlling. Pak interprets the language dealing with the calculation of the debtor's
28 income but the statutory language varies when treating the calculation of the debtor's expenses.

1 Significantly, the income side of the equation does not contain the mandatory admonition- shall be
2 determined- for the calculation of the above median income debtor's expenses. Also, there is a
3 another reason, other than different statutory language, why expenses may be treated differently than
4 income in the disposable income calculation. Arguably, confirming a chapter 13 plan based upon
5 past income as opposed to current income is borderline absurd. Confirming a chapter 13 plan based
6 upon standardized and fixed expenses, however, may represent rational policy. Congress reasonably
7 could have decided to deprive the court of discretion and to simplify the confirmation process by
8 standardizing chapter 13 debtor expenses.

9 Bankruptcy courts that have considered this issue have produced conflicting authority,
10 dividing between courts that strictly adhere to § 707 (b)(2)(A) expenses and courts allowing more
11 flexibility. The former reason that the Congress' use of the phrase "shall be determined..." make the
12 use of means test expenses mandatory. In re Rezentes, 368 B.R. 55, 59 (Bankr. D. Haw., 2007) and
13 In re Edmondson, 363 B.R. 212, 218-9 (Bankr. D. N.M., 2007). The latter focus on the words
14 "projected" and "expended" and note that at confirmation the court must determine projected income
15 and projected expenses in order to determine projected disposable income. Meek, 370 B.R. at 306-
16 309 and In re Edmunds, 350 B.R. 623, 649 (Bankr. D. S.C., 2006). These courts reason that if the
17 court was bound by historical and standardized calculations, the court could not make the forward
18 looking projections required for confirmation. Despite this division of opinion, most courts agree
19 that the mandatory language of § 1325 (b)(3) in some way limit above median income debtors to the
20 expenses categorized in § 707 (b)(2)(A) and (B). In other words, while there may or may not be
21 some flexibility regarding § 707 means test expenses, above median income debtors must calculate
22 expenses using the standardized expenses. Meek 370 B.R. at 305-306. In Judge Myers' words,
23 "...the court may consider, whether a given expense- *within* those expenses authorized by § 707
24 (b)(2)(A) and (B)- should be allowed when considered in light of the debtor's post petition
25 circumstances and, importantly, the proposed chapter 13 plan." Id. at 307-308

26 At this point, the court turns to the trustee's contention that the court retains threshold
27 authority to determine whether Mr. Broers' expenses are reasonably necessary. The court does not
28 agree with the trustee's contention. Above median income debtors must calculate expenses in

1 accordance with § 707 (b)(2). By adopting categories and fixed amounts, Congress specified the
2 expenses it allowed above median income debtors. In the court’s opinion, Congress intended to
3 diminish the court’s authority to make subjective judgments regarding what is a reasonable expense.
4 In so ruling, the court follows Armstrong, where Judge Williams allowed the debtor to deduct
5 ownership cost for a vehicle when the debtor was not actually making a loan or lease payment on the
6 vehicle. Before the 2005 amendments, it is doubtful that any court would have found that such an
7 expense is reasonably necessary.

8 If this court lacks threshold authority to decide whether Mr. Broers’ monthly expenses are
9 reasonably necessary, what authority or discretion does the court retain? Although not applicable
10 here, the 2005 amendments provide the debtor may show “special circumstances” as described in §
11 707 (b)(2)(B) that “justify additional expenses or adjustments of current monthly income for which
12 there is no reasonable alternative[.]” Additionally, the use of categories and fixed amounts under the
13 National and Local Standards does not answer every question that will come before the court upon
14 confirmation of an above median income debtor’s chapter 13 plan. As demonstrated by the IRS’ use
15 of the Financial Analysis Handbook, Local and National Standards require interpretation. Moreover,
16 the IRS standards are a moving target. On October 1, 2007, the IRS changed the standards without
17 notice outside the Treasury Department. On its webpage, the IRS allows: “For bankruptcy purposes,
18 the effective date for the standards will be January 1, 2008, to allow for the orderly administration of
19 the bankruptcy laws.” Hon. Keith M. Lundin, The IRS Sneezes and the Advisory Committee on
20 Bankruptcy Rules Catches Cold, 11 Norton Bankruptcy Law Adviser (November 2007). In short,
21 the means test, form B22C, and the IRS standards all require interpretation and application, which is
22 the authority and discretion remaining with the court.

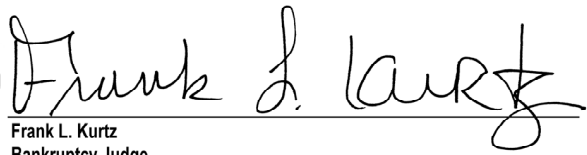
23 An example of that discretion is the last question presented by this case. Can Mr. Broers
24 claim transportation allowances for his second vehicle on form B22C? Under the circumstances of
25 this case, the answer is no. Mr. Broers’ first vehicle is sufficient for all of his transportation needs.
26 It would be unreasonable to ask his creditors to fund a second vehicle for which there is no
27 demonstrated need. Under the standardized expenses mandated by Congress, Mr. Broers is entitled
28 to an operation deduction and an ownership cost deduction for his first vehicle. Under the

1 standardized expenses mandated by Congress, whether Mr. Broers as a single person household is
2 entitled to a deduction for a second vehicle is not clearly established. For that reason, the court
3 exercises it's discretion and decides that the transportation allowance for the second vehicle is not
4 reasonably necessary.

5 CONCLUSION

6 In conclusion, the court holds Mr. Broers may not deduct a transportation expense for his
7 second vehicle. The court denies the confirmation of Mr. Broers' chapter 13 plan because the plan
8 does not provide that all of the debtor's projected disposable income will be applied to make
9 payments to unsecured creditors. Mr. Broers is granted 15 days from the date of the filing of this
10 decision to file an amended plan. In the event Mr. Broers fails to file an amended plan, the court will
11 enter an order dismissing his case.



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Frank L. Kurtz
Bankruptcy Judge

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